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State of Wisconsin
Before the Arbitrator

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the matter of the petition of

The Labor Association of Wisconsin

Daniel Nielsen, Arbitrator
Decision No. 26420 - A

For final and binding arbitration
involving law enforcement personnel
in the employ of

Appointment: 05/08/90
Hearing: 10/10/90 - 10/23/90
Record Closed: 03/05/91
Award 05/11/91

The City of Cedarburg (Police Dept.)

Appearances:

Labor Association of Wisconsin, Inc. 2825 North Mayfair Road, Wauwatosa, WI 53222 by **Mr. Patrick Coraggio**, Labor Consultant.

Lindner & Marsack, S.C., 411 East Wisconsin Avenue, Suite 1100, Milwaukee, WI 53202 by **Mr. Jonathon Swain** and **Ms. Lisa Leemon**, appearing on behalf of the City of Cedarburg.

Arbitration Award

The undersigned was selected by the Labor Association of Wisconsin (hereinafter referred to as either the Association or LAW) and the City of Cedarburg (hereinafter referred to as either the City or the Employer) to hear and decide a dispute arising under Section 111.77 Wis. Stats. over the terms of the collective bargaining agreement for 1990 and 1991.

Hearings were held on October 10, 1990 and October 23, 1990 in the City Council Chambers in Cedarburg, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits and other evidence as was relevant to the dispute. The parties submitted post-hearing briefs, and the City submitted a reply brief. The briefing schedule closed on March 5, 1991, whereupon the record was closed. Now having considered the record evidence, the arguments of the parties, the statutory criteria, and the record as a whole, the undersigned makes the following Award.

I. Statutory Criteria .

This dispute is governed by the terms of Section 111.77, Stats.:

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The Lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

While each of these criteria is not discussed in detail, each has been fully considered in arriving at the Award set forth herein.

II. The Final Offers

There are three areas of dispute: wages, health insurance and the assignment of shifts according to seniority. The Association's final offer essentially proposes the following:

- A. **Wages:** 3% atb effective 1/1/90
3% atb effective 1/1/91
2% atb effective 7/1/91

B. **Health Insurance:** Effective upon signing a successor agreement to the 1988-89 contract, the deductible shall be increased to one hundred dollars (\$100.00) per person per year, and three hundred dollars (\$300.00) per family per year. Additionally, the drug prescription card shall be increased to five dollars (\$5.00) per prescription.

Status Quo on plan benefits.

Status Quo on premium payment.

C. **Seniority:** The assignment of shifts shall be made by the Chief of Police or his designee, to employees on the basis of seniority according to time in grade for each job classification, except that in the event an employee takes or suffers a demotion in grade for any reason, his seniority in a higher grade shall count as time in grade in the lesser grade. All employees reserves the right to file a grievance if seniority is not allowed.

The final offer of the City essentially provides as follows:

- A. **Wages:** 4% atb effective 1/1/90
4% atb effective 1/1/91

B. **Health Insurance:** Introduce a two track self insurance plan with a PPO option and non-PPO option, replacing the current self-insurance system. Employees using the PPO option would be subject to a 90/10 copayment of the first \$2,000 per individual and \$6,000 per family (\$200 and \$600 maximum). Employees using the non-PPO option would pay an up-front deductible (\$100 individual and \$300 family) and an 80/20 copayment of the next \$2,000 per individual and \$6,000 per family (\$400 and \$1200 maximum).

Additionally, the City proposes a payment of \$40 per month through a Section 125 cafeteria plan. This amount may be applied to the \$40 portion of the monthly insurance premium for which employees are liable under the City offer, or may be taken as additional compensation, at the employee's option.

C. **Seniority:** Status Quo

III. Arguments of the Parties

A. The City's Arguments

The City is a leader in providing high wages to employees. This leadership will continue under the City wage offer. The City has also been a leader in the provision of fringe benefits, with Cedarburg officers enjoying a wide variety of fringe benefits not available to their peers. The health insurance coverage under the old self-insurance plan provided 100% payment of all claims, with no employee cost for premiums or services, outside of a small cost sharing on major medical expenses, under which employees pay a \$50 per person (maximum of three) deductible and an 80/20 copayment.

The new insurance plan proposed by the City is intended to encourage use of a PPO option which offers substantial cost savings to the City while continuing to provide good quality medical coverage for workers. Employees choosing not to use the PPO would have that option, but would pay a deductible and a higher percentage copayment (80/20 vs. 90/10 under the PPO). In addition the City proposes to add a \$40 monthly premium contribution by employees, which would be repaid by the City through a Section 125 cafeteria plan. This would encourage employees having coverage through a spouse to decline insurance and use the \$40 for other purposes.

The City characterizes the Association proposal to allow shift selection by seniority as unreasonable and unnecessary, and urges rejection of this proposal.

The City maintains that the appropriate comparables in this case are the cities of Mequon and Port Washington, the villages of Grafton, Saukville and Thiensville, and Ozaukee County. The Association proposes to include the City of West Bend and the Village of Germantown, as well as Mequon, Grafton, Port Washington and Ozaukee County, while excluding Saukville and Thiensville. The City urges rejection of West Bend, which is located in a different county and is not geographically proximate, and Germantown, which is far more subject to the influence of the City of Milwaukee than are the Ozaukee County communities employed by the City.

The City asserts that a comparison of Cedarburg's wages under the City's 4% offer with those paid in comparable communities confirms the City's claim of wage leadership, even if Germantown is included for comparative purposes:

<u>1990 Patrolman -</u>	<u>Maximum Rate</u>	<u>% Increase</u>	<u>\$ Increase</u>
Germantown	\$2793	3.5	\$ 83
Mequon	\$2756	4.5	\$119
City of Cedarburg Offer	\$2710	4.0	\$104
Grafton	\$2625 Ave	3.6 Ave	\$ 90 Ave
Port Washington	\$2584 Ave	3.0 Ave	\$ 77 Ave
Thiensville	\$2514	3.5	\$ 85
Ozaukee County	\$2496	4.0	\$ 96
Saukville	\$2490	4.3	\$102
Average	\$2594	3.8	\$ 93
City of Cedarburg Offer	+\$116	+.2%	+\$11

(Grafton and Port Washington both had mid-year split increases)

Projecting a four percent increase among all of these area communities in 1991 would yield a continued leadership position for the City. Excluding Germantown, Cedarburg officers will realize \$125 per month more than the area average in 1991. Even including Germantown, the City will pay \$95 more each month than will its comparables.

The City argues that consideration of the overall compensation package, including such elements as dental insurance, uniform allowance, longevity, compensatory time, educational incentives, holidays, vacations, sick leave and workers compensation supplemental pay, reinforces the conclusion drawn from the wage data, that Cedarburg police officers are extremely well compensated. This high level of compensation clearly supports the City's desire for some reform in its health insurance package.

The City asserts that its health insurance proposal is more reasonable than that proffered by the Association, and is amply supported by the evidence in this case. The need for a change became clear in 1989, when claims for health care far exceeded those paid in 1988. The 50.62% increase in 1989 continued a trend of rapidly escalating costs:

	Monthly coverage costs			
	1986	1987	1988	1989
	<u>Cost/% increase</u>	<u>Cost/% increase</u>	<u>Cost/% increase</u>	<u>Cost/% increase</u>
Single	\$92.57 / 42%	\$115.43 / 25%	\$118.39 / 2.6%	\$161.70 / 37%
Family	\$236.00 / 32%	\$294.31 / 25%	\$295.58 / 1.27%	\$420.83 / 42%

In response to this, the City formed an expert advisory committee, which made recommendations to the City Council. Acting on those recommendations, the City Council formulated the insurance proposal contained in the City's final offer.

The City argues that its final offer preserves employee choice while reasonably allocating the costs of such choice. Preferred providers will generally provide services at a 15 to 20% discount, thus helping to hold the line on health care costs. Employees who use the preferred providers will avoid the deductible and pay only half the copayment of those who choose to avoid the PPO option. Only those employees who voluntarily choose to avoid the less expensive preferred providers will incur higher costs, a fair tradeoff in light of the greater expense these employees force the City to incur.

Experience under the new plan proves its effectiveness, and its relatively slight impact on employee out of pocket costs. The City currently has 17 single plans and 40 families under the new option program. Claims for the period from January 1, 1990 through September 30, 1990 totaled \$70,377 under the option plan. For the 34 employees under the old plan during that period, claims totaled \$109,870. The cost of the new plan is \$110.59 per month for single coverage and \$245.36 per month for family. This compares with \$215.33 per month for single coverage under the old plan and \$489.08 per month for families.

The significant cost savings under the new plan, the City argues, have been achieved at a very minimal cost to employees. Deductibles and copayments under the new plan averaged \$21.00 per month for employees making claims between January 1 and September 30, 1990. Under the old plan, employees paid a \$50 deductible for major medical (including office visits) and an 80/20 copayment of the next \$2,000 per individual and \$5,000 per family. During the first nine months of 1990, employees under the old plan paid an average of \$15.00 per month in deductibles and copayments. The \$6.00 in additional employee cost under the new plan is not significant when compared with the 50% cost savings achieved under the plan.

The City maintains that its efforts at controlling costs track the efforts underway in private industry across Wisconsin and in public employment among the comparable communities:

Grafton: Grafton has a plan very similar to that proposed by the City, with a PPO and non-PPO option, the latter being more costly to employees. While the PPO option has no coinsurance feature, the City notes that Grafton does not provide its employees with dental insurance, and pays at a substantially lower monthly rate than does Cedarburg.

Mequon: Mequon participates in the State Dual Choice program, which offers base plus insurance and HMO options. The base plus plan has limitations on total coverage per illness, as well as deductibles and coinsurances. Further, the employees electing base plus coverage must pay a substantial portion of the monthly premium. This premium contribution for family coverage is four times greater than the difference in pay enjoyed by the higher paid Mequon officers. Thus employees in Mequon may still have available a standard base plus insurance plan, but they pay a very high cost for it.

Ozaukee County: Ozaukee County maintains a self insured major medical plan, with up front \$200/\$400 deductibles. However, the County also requires a monthly premium contribution from each employee of \$8.50 for single and \$17.00 for family. This guarantees an annual cost of at least \$102 to \$204 even for employees who do utilize the insurance. No such cost is realized under the City's final offer. The City also notes that, while the County insurance plan might be in some respects superior to its offer, the total compensation received by County deputies is far less than that received by Cedarburg officers under the City offer.

Port Washington: Port Washington self funds a base plus major medical plan with 100% payment of basic medical benefits. Major medical is subject to a \$100/\$300 deductible and an 80/20 copay of all expenses thereafter. The lack of any cap on major medical expenses exposed employees to enormous financial risks, risks not shared under the City's offer to the Association. As with the County, Port Washington's officers receive considerably lower levels of total compensation than do those in Cedarburg.

Saukville: Saukville maintains a comprehensive major medical plan administered by WPS, with a \$400/\$800 deductible. Saukville employees, however, contribute to their insurance on a sliding scale, with new hires paying 25% of the cost. Fully paid insurance is not available until the sixth year of service. Combined with the

lower wages paid in Saukville and the lack of dental insurance, longevity, compensatory time and educational incentives, this insurance premium copayment more than offsets any advantage Saukville officers may enjoy in the area of health insurance benefits.

Thiensville: Thiensville offers its employees a standard base plus major medical plan, with a \$50/\$100 deductible. Claims other than physicians and prescriptions are subject to an 80/20 copay for the next \$2,000 per individual and \$5,000 per family. Employees in Thiensville are required to contribute to their insurance, at the rate of \$5 per month for single coverage and \$10 per month for family plans. As in many other comparables, the somewhat higher health benefit is offset by a substantially lower base wage and the lack of dental insurance for officers in the standard health plan.

The foregoing comparison proves that base plus plans like the City's old insurance plan are found in only half of the comparable jurisdictions. In those municipalities offering base plus plans, the higher insurance cost is offset by premium contributions or lower overall compensation packages. The trend in the comparables is towards a realization that employers cannot afford both top of the line insurance plans and generous pay and benefits in other areas.

The City argues that the need for change and the effectiveness of its proposed solution are amply proven in the record, and supported by compensation levels in comparable communities. The negotiations leading up to the current impasse further enhanced the overall package of the City's officers, providing carry over of comp time, an increase in the uniform allowance, increased notice of shift changes and greater safeguards for officers under investigation. Taken as a whole, the City argues that its final offer should be accepted.

In closing on the health insurance issue, the City acknowledges an ambiguity in its proposal. Although it is possible to interpret the City's proposal as being retroactive to January 1, 1990, the City disclaims any such intent, and reiterates its statement at the hearing that it would introduce the new plan only prospectively after the issuance of an award. It would be unreasonable to interpret the City's proposal as intending retroactive application, since this would involve reprocessing every claim. The more reasonable, and correct, interpretation is that the new

insurance plan, premium contribution and Section 125 plan would all be introduced after receipt of a favorable award.

Turning to the Association's proposal to have shift assignments made by seniority, the City asserts that there is simply no justification for this proposal. The Association bears the burden of proving a need for change, as well as showing that the proposed change meets the need without imposing an undue burden on the other party. Arbitral precedent strongly disfavors changes in basic contract language through arbitration, and there is no reason to set aside this principle in this case.

Police officers already have the right to exercise seniority in selecting their primary shift. The Association language goes to temporary shift assignments. It is undisputed that temporary assignments are almost always made on the basis of seniority within rank under existing department policies. There is no need, the City asserts, for stripping the Chief of his discretion in making temporary assignments when there is no evidence of abuse.

While there is no evidence of problems justifying change in the existing system, the strict seniority proposal of the Association will inevitably impose hardships on the City. The only circumstances in which a senior officer might be required to temporarily change shifts are when there is a need for specialized skills on a given shift, or where there must be a senior officer supervising a new officer. The Association's proposal would prevent the City from effectively using the specialized skills of officers such as the juvenile sergeant and the detective sergeant, and would occasionally send new officers out under the supervision of other relatively inexperienced officers. This is distinct from the situation in the dispatchers unit, where the work is not specialized and strict adherence to seniority does not interfere with the City's ability to provide services. In light of the evidence showing that transfers out of order of seniority are rare, the burden imposed on the City must be deemed unreasonable. Given the absence of any quid pro quo for the substantial change requested, the complete lack of support for this proposal among external comparables, and the burden imposed on the Department, the City argues that the Association proposal must be rejected.

For all of the foregoing reasons, the City urges adoption of its final offer.

B. The Association's Arguments

The central issue in this case is the City's attempt to reduce health insurance. The Association takes the position that a review of the statutory criteria must yield a decision in favor of its final offer. The criteria relevant to this dispute are the "interests and welfare of the public", "internal comparisons", "external comparisons" and "cost of living". Each supports selection of the Association position on the contested issues.

The final offer of the Association best serves the interests of the public by recognizing the need to maintain morale and retain highly qualified employees in a small department. The reasonable desire of Cedarburg officers to maintain their above average wage rates and health insurance benefits is consistent with maintaining morale. The shortsighted effort of the City to reduce health insurance benefits for officers and their families, in the face of an evident willingness of officers to make sacrifices to maintain their benefits, will inevitably erode morale and make it more difficult to retain officers.

The Association asserts that its proposal to employ seniority in making temporary shift transfer is another important element in maintaining department morale. Employees working 24 hours per day, 7 days per week place great value on the ability to predict their shifts, since this offers stability for their home life. Requiring that seniority be followed in making temporary assignments does not remove the Chief's ability to make such transfer -- it merely requires that less senior employees be exposed to this disruption of their routine. The Association notes that this right is already part of the dispatcher's contract with the City, and has not caused any hardship in the operation of that function.

Part of the interests of the public criterion is the financial ability of the unit of government to meet the costs of the Association proposal. The Association avers that there is no question of Cedarburg's being unable to meet the cost of its final offer, and that this issue was never even raised during bargaining. Thus, the Association argues, the interests of the public are most clearly served by selection of the Association offer.

Turning to the question of external comparisons, the Association asserts that its proposed group of comparables -- Ozaukee County, the cities of West Bend,

Mequon and Port Washington, and the villages of Germantown and Grafton -- are the most appropriate communities for comparison purposes. The officers of Mequon and Grafton, and the County's deputies, work the areas contiguous to Cedarburg. The remaining areas are similar to Cedarburg in population and are geographically proximate. Further, there is evidence in the record that the City's officers interact with officers in these other jurisdictions. The City's attempt to include Thiensville and Saukville must be rejected, since those communities are only one-third the size of Cedarburg.

A review of the external comparables strongly supports the Association's status quo position on health insurance. Ozaukee County offers five health care programs to its employees and pays a dollar cap. Employee costs for premiums are minimal. In Germantown, the village maintains a self-funded traditional insurance plan very similar to that in Cedarburg, and pays 100% of the premium. Port Washington, West Bend and Grafton also maintain self-funded traditional plans without employee contributions. Mequon participates in the State of Wisconsin program, which removes the issue of premium contributions from the bargaining table by prohibiting employer contributions in excess of 105% of the lowest cost HMO. The Mequon plan should be discounted in this proceeding because of this limitation on bargaining.

The Association summarizes the comparison with other jurisdictions as showing a pattern of self-funded, traditionally designed, no employee cost plans consistent with the status quo for officers in Cedarburg. All but Ozaukee County's insurance plan have resulted from voluntary collective bargaining. None require a contribution anywhere near the \$40 per month proposed by the City. The great weight of the comparables, the Association asserts, support its position on health insurance.

Internal comparisons also support the Association's bid to maintain its current health insurance plan. The City has three bargaining units -- the police officers, the police dispatchers and the department of public works -- all of which operate under the current health insurance plan. Only the unrepresented employees and supervisors are subject to the City's PPO option plan. Thus there is no evidence that the new plan would ever be voluntarily adopted in collective bargaining.

The Association points out that there is little justification for the City's attempt to radically change the insurance coverage. With the exception of 1989, increases since the inception of self-insurance have been minimal. The large increase in costs in 1989 was attributed by the City's own witness to an unusual claims experience. This unusually large cost in 1989 has been projected by the City to show a huge increase in 1990. There is little reason to credit the City's \$400,000 estimate for 1990, unless another unusual year is experienced, which is by definition unlikely. Even if one accepted the 1989 figure as justifying some change in insurance, the Association notes that there is no evidence that police officers played any role in causing the higher costs in past years. Thus they should not be asked to bear the burden for those increases.

The Association argues that there must be credit given it for structuring its wage offer to reduce costs to the City, thus offering the City a quid pro quo for maintaining the current insurance plan. While other area law enforcement personnel received 1990 increases in the vicinity of 4%, and the City offered 4%, the Association has proposed to settle for 3% for that year. This is well below the cost of living, and saves the City \$6,000 in the first year of the contract. In the second year of the contract, the Association proposes a 3% increase on January 1, 1991 and 2% on July 1. This helps somewhat to preserve the wage position of the Association, but again reduces the real cost to the Employer. The wage position of the Association provides real and substantial savings to the City, which more than justify retention of the health plan.

The cost of health insurance is recognized by the Association's final offer in the Association's proposal to increase deductibles from \$50/150 to \$100/300. Further, the Association has agreed to switch from a \$2.00 drug card to a \$5.00 drug card. Overall, the Association has made an extraordinary effort to meet employer concerns about health insurance costs, while still maintaining a valuable benefit for Association members.

The Association points to the fact that the City's final offer is, on its face, intended to apply retroactively. Notwithstanding the City's last minute claim at the hearing that it only intended prospective application, the clear language of the offer can only be read as a retroactive provision. Since neither PPO option nor the IRS Section 125 Cafeteria Plan for reimbursing the cost of the \$40 monthly employee

contribution cannot be established retroactively, the only portion of the offer that will reach back to January 1, 1990 is the \$40 per month premium contribution. This is a substantial change in the status quo, for which the City has offered no offsetting benefit nor even a showing of need.

Addressing finally the relatively less important issue of shift selection by seniority within rank, the Association reminds the arbitrator that this has been the subject of grievance activity in the past, suggesting some need to clean up the contract language. The City claims of hardship are, the Association contends, merely a smokescreen. The specializations of the juvenile sergeant and the detective sergeant are apparently not so great as to cause the City to create a separate classification for those officers, which would shield them from being transferred to cover for other officers and sergeants. That power lies solely within the City's discretion, and if they choose not to exercise it, they should not be allowed to assign any resulting problems to the Association's reasonable attempt to protect senior officers. The Association also notes that the dispatchers within the same department already enjoy the protection of seniority based temporary shift transfers and that there have been no operational problems as a result.

For all of the foregoing reasons, the Association asks that its final offer be deemed more reasonable than the City's, and be selected in this proceeding.

IV. Discussion

Wages are a minor issue in this case, insofar as the actual increase in rates is concerned. Each party argues its wage offer for tactical advantage on the other issues -- the Association citing a lesser cost as a quid pro quo on health insurance and the City citing total compensation as a justification for change on that same issue -- and the wage offers are given full consideration as an adjunct to the other elements of the final offers in weighing the overall outcome. As a separate issue, however, wages do not control the decision here. Each party has proposed an 8% lift over the life of the contract, and this is well within the range of settlements for law enforcement personnel in the area.

A. Comparability

The preliminary issue of comparability focuses on the City's efforts to include Thiensville and Saukville as comparables and the Association's desire to cite Germantown and West Bend. Relatively little data was submitted in support of the comparables proposed by each party, other than population, square mileage, number of employees and maps showing the location of each community. Geographic proximity, particularly the inclusion of contiguous jurisdictions, is a traditional factor in determining comparability. Population is even more persuasive in law enforcement, given that the issues of policing are influenced in many ways by the population of the jurisdiction.

The undersigned can find no basis for including the City of West Bend among the comparables for Cedarburg. West Bend is not geographically proximate and is over twice the size of Cedarburg. Contacts between Cedarburg officers and those in West Bend do not suggest a special commonality of interest between the two departments. For much the same reasons, Thiensville and Saukville are not persuasive comparables. Although closer than West Bend, they are substantially smaller than Cedarburg, and again there is nothing to indicate that the bargainers in Cedarburg might look to these communities for special guidance in striking their bargain. Granting that Arbitrator Briggs included both Thiensville and Saukville with Cedarburg in arriving at a comparable grouping in his 1983 Grafton Award, the undersigned finds that Arbitrator Briggs did not fully express what those factors were in the record before him that led to the inclusion of these two much smaller communities.

Germantown is reasonably proximate to Cedarburg. More importantly, the populations of the two communities are roughly equivalent. The undersigned finds no basis in the record for excluding Germantown from the listing of comparable communities, and thus concludes that the appropriate set of comparables for the Cedarburg Police Department consists of:

The City of Port Washington
The City of Mequon
The Village of Grafton
The Village of Germantown
Ozaukee County

B. Shift Selection by Seniority in Rank

Section 12.01 of the current contract governs shift selection:

"Section 12.01 - Shift Assignments. When practical and as long as each shift, in the opinion of the Police Chief or his designee, contains employees having the experience to carry on the Department's usual responsibilities, the assignment of the shifts shall be made by the Police Chief or designee to employees on a seniority basis according to time in grade for each job classification, except in the event an officer takes or suffers a demotion in grade for any reason, his seniority in a higher grade shall count as time in grade in the lesser grade. All employees shall reserve the right to file a grievance if seniority is not followed, provided, however, that in the event a grievance is filed under this Section and the grievance is sustained, the decision sustaining the grievance shall not include any back pay or monetary damages."

The Association proposes to delete the underlined portions of this language. The intended effect of the Association proposal is to require that seniority within the two existing ranks of sergeant and patrol officer be followed in making temporary transfers from one shift to another. This is the basis on which permanent shift assignment are made, and it is undisputed that the City generally does follow seniority within ranks when making temporary assignments as well.

The Association bases its desire for change on a legitimate concern for stability in work schedules. This is a particularly valuable benefit to law enforcement personnel and others who staff a 24 hour, seven day a week operation. However, the evidence does not show that the City has made it a practice to temporarily transfer unit employees from shift to shift on a regular basis. When such transfers have been made, the City has abided by seniority unless operational needs dictated moving a senior officer in order to allow supervision of an inexperienced officer by a senior officer, or to allow the retention of a junior officer with specialized skills on the day shift in order to perform work requiring contact with the schools, juvenile courts, social workers or the district attorney's office.

Language changes must generally be shown to answer a specific problem or need, without imposing an undue hardship on the other party. While the Association's desire to improve this language is understandable, the record does not show an abuse of discretion by the City in making temporary shift transfers, and thus the

need for change is not clearly established. Further, the proposed language makes no allowance for the use of specialists such as the juvenile officer during those times when it makes sense to have them on duty. It does not appear that the juvenile officer and detective sergeant must always work the day shift in order to fulfill their functions, but the evidence does establish that their jobs will sometimes require them to be on duty during normal business hours. The Association's language also opens the possibility of assigning inexperienced officers to fill a shift without an experienced officer on duty to provide supervision and training. Again, this is not always a concern for the City, but when the need arises for the temporary transfer of an experienced officer to fill in with a trainee the proposed language would not allow it. Given the minimal showing of need, this is enough of a hardship on the City to dictate rejection of the Association offer on seniority.

C. Health Insurance

The City's proposes to eliminate its current self funded base plus plan in favor of a PPO option plan. No changes in coverage are thereby affected, but employer and employee costs change. The old plan provided for a small deductible and copayment on the major medical alone. The PPO option would call for a 10% copayment of the first \$2,000 per individual and \$6,000 per family, or a maximum per year cost of \$200 and \$600. Employees choosing not to use a preferred provider would be subject to up-front deductibles on \$100 per individual and \$300 per family, plus 20% copayment of the next \$2,000 per individual and \$6,000 per family, for a maximum per year cost of \$500 and \$1500. Finally, the City plan imposes a \$40.00 per month premium contribution, but offsets it by establishing a \$40 per month payment to employees via an IRS Section 125 plan. The purpose of this last feature is to encourage employees having coverage available from other sources to eschew unneeded coverage under the City plan. The City represents this plan to have application only after receipt of an Award, although the schedule for implementation is not expressed on the face of its offer.

As an alternative to the City's changes, the Association proposes to retain the current plan, but to increase the major medical deductible from \$50 per individual and \$150 per family to \$100 and \$300 respectively, and to increase the drug card from \$2 to \$5. The Association asserts that it has made these changes, and has structured its wage offer with split increases, as a quid pro quo for retaining the health insurance plan. Further, the Association challenges the City attempt to

change the health insurance plan as impossible, since the City's offer is effective January 1, 1990 and the changes cannot as a practical matter be retroactively applied. As a quid pro quo for retaining the current insurance plan in the face of rising costs, the Association has proposed a structured wage increase yielding the same 8.16% lift on the end rates as the City's offer, but costing 7.12% over the life of the contract. The savings on wage cost of \$21,780 is the Association's quid pro quo.

The party seeking change in an economic area must generally show some need for the change, either because of a problem with the status quo or because the change sought is widespread among comparable employers and bargaining units, show that the proposed change reasonably meets the need, and demonstrate that some offsetting quid pro quo has been made available to the party resisting the change. In this case, the City cites rapidly rising medical costs as justifying its request for a reform of the self insurance program.

The City calculates its contribution rate for the current plan in 1990 as \$518.92 per month, an increase of \$133.37. This figure was generated by the City's insurance consultant. It is premised on the experience in 1989 and an inflation factor. 1989 saw a very large increase in net claims paid over 1988 -- \$298,489 vs. \$198,173. Testimony and exhibitry indicate that 1988 was an unusually mild year for claims experience, while 1989 was unusually bad. This led to an underfunding of the insurance plan for 1989, rippling the increased costs forward to 1990. Thus the rate for 1990 is overstated in relation to the actual claims experience. The actual cost of family plans per month through the first nine months was \$489.08. The City's 1990 rates are quite high in comparison to those paid for base plus plans by its comparables:

Grafton	Family - \$446.00	Single - \$160.00
Mequon	Family - \$369.87	Single - \$155.92
Ozaukee County	Family - \$398.97	Single - \$155.50
Port Washington	Family - \$300.00	Single - \$120.00 (Jan-June)
	Family - \$360.00	Single - \$140.00 (June-Dec.)
<u>Average</u>	<u>Family - \$386</u>	<u>Single - \$150</u>
Cedarburg	Family - \$518.92	Single - \$206.11
	(1989-\$385.55)	(1989-\$148.15)
Actual 1990	Family - \$489.08	Single - \$245.36

The City was at the 1990 average of its comparables with its 1989 rates, which as noted above were probably somewhat understated because of the light claims experience in 1988. Based upon these figures, the undersigned finds that the City has a reasonable concern over the cost of its base plus self funded insurance plan, and is justified in making some effort at containing the costs of the plan. The City projects a savings of \$244 per month on family plans and \$105 per month for single plans under its PPO option plan, using the 1990 actual costs for those plans of \$110.59 for single and \$245.36 per month for family. Using 13 family plans and 2 single plans as the basis, the potential savings across the contract, had the PPO plan been in place from January 1, 1990, would have been approximately \$81,000.

Turning to the substance of the City's proposal, the health insurance issues may be broken down into the following elements: (1) retroactivity of the City plan; (2) the proposal to add a \$40 per month premium contribution and a \$40 per month cafeteria plan benefit; (3) the introduction of a PPO option; and (4) the increase in cost shifting through deductibles and copayments. Each is addressed in turn.

1. Retroactivity

The City admitted at the hearing that its insurance proposal was ambiguous as to implementation date, and represented on the record that the plan was intended to apply prospectively, as soon as practically possible after an Award. The undersigned accepts this representation as a reasonable interpretation of the City final offer. Since the major change under the City proposal is designed to encourage use of a PPO, it is reasonable to assume that the City did not intend retroactive application. Applying the monetary disincentives to employees for the use of non-preferred providers during the contract hiatus would be punitive, given the ambiguity in the City offer, as well as an administrative burden for the City. Furthermore, the Section 125 plan could not be implemented on a retroactive basis. The overall design of the City's insurance proposal, together with the representations made at hearing, persuade the undersigned that the plan was intended as a prospective change.

2. The Premium Contribution and the IRS Section 125 Plan

The proposal to impose a \$40 monthly premium contribution would, standing alone, constitute a serious and substantial change in status quo. \$40 per month would move the City from being at the bottom of the comparables for employee

premium contribution to being among the most costly of the insurance plans. In focusing on this aspect of the City proposal, however, the Association ignores the fact that the premium contribution is completely offset by payments from a premium-only cafeteria plan established in the offer. This scheme is designed not to exact a payment for insurance coverage but to provide an incentive for employees not to take the insurance if it is not needed. Aside from being a legitimate and reasonable goal for City bargainers, it can be viewed as an added benefit for employees, since an employee who elects not to take insurance under the current system receives no credit for the cost savings to the City. The proposal to establish this incentive system imposes no burden on employees, and this portion of the City offer is a reasonable and justifiable change in the status quo.

3. Establishment of a PPO / Non-PPO Option Plan

The City stands to save 15 to 20 percent on discounts for employees using the preferred providers contracted with under the PPO option. As noted above, the City's desire to reduce its costs for medical coverage is reasonable given the recent increases in those costs. The means by which the City proposes to reduce its costs is also reasonable. Unlike an HMO, the PPO plan does not bind the employee to a single source of medical services. By preserving a non-PPO option, the City has preserved an employee's right to choose a physician or other provider of his or her choice if the employee finds the preferred providers objectionable, as some officers apparently do. Furthermore, the City plan does not reduce the coverages available to employees under either option. The risks indemnified by the old plan continue to be covered under the new plan. Thus the City offer preserves the existing benefits and offers the same range of providers to employees as were previously available.

The limited success of cost containment measures leads most observers to agree that the charges made by providers are driving force behind increases in medical insurance costs. By focusing on provider costs rather than restricting consumer benefits, the City proposal aims to control costs in what is probably the most effective way. The introduction of a PPO option does not, as a practical matter, constitute a change in the status quo insofar as benefits are concerned. The more significant change instituted under the City offer is, instead, in the system of deductibles and copayments.

4. Cost Shifting

The current plan has no deductible or copayment on basic medical benefits, and a \$50 individual/\$150 per family deductible on major medical including office calls, with a 20% copayment thereafter to a maximum of \$400 per individual and \$1,000 per family. The Association has offered to increase the major medical deductible to \$100 and \$300 and increase the drug card payment to \$5 per prescription from \$2. The practical effect of the change in major medical deductible on the City's costs would be modest since, as the Association's own expert noted: "Very few employees ever reached their out-of-pocket limit on the old plan because the deductibles and co-insurance were only applied to the major medical portion of the plan, and not to the hospitalization, medical or surgical side, which was paid at 100% with no co-pays. This is the side where the bills add up fast and large." (Association Exhibit #1).

The City proposes that employees using the PPO pay no deductible, but contribute 10% of the first \$2,000 per individual, up to \$6,000 per family. This copayment is applicable to all charges. Employees not using the PPO would pay a deductible on all charges of \$100 per individual up to a \$300 per family maximum, after which co-insurance would be paid at 20% of the first \$2,000 per individual, with a \$6,000 family maximum. Both options increase the prescription drug card to \$5 per prescription, unless generic drugs are purchased. Using family coverage for comparison purposes, either option is a major change:

<u>Plan</u>	<u>Deductible</u>	<u>Co-Payment</u>	<u>Total Exposure</u>
Current	\$150 Maj	\$1,000 Maj Med	\$1,150 Major Med Only
PPO	\$ - 0 -	\$ 600 All	\$ 600 All coverage
Non-PPO	\$300 All	\$1,200 All	\$1,500 All coverage

While the PPO option appears on its face to lessen the costs to an employee with family coverage, broadening the co-insurance to include all charges is likely as a practical matter to produce a "wash" or even an increase in actual employee costs. For employees choosing to exercise the status quo right to select their own providers, the cost impact is even more obvious. Precise comparisons of employee costs are difficult across plans, because actual experience information is not available for the comparables. Comparing theoretical employee costs for family

coverage with the comparable plans in other communities, and making allowances for the difference in impact between costs associated only with major medical and those applicable to all plan benefits, suggests that the City offer overreaches somewhat in the area of cost shifting:

<u>Community</u>	<u>Premium Contrib.</u>	<u>Deductible</u>	<u>Co-insurance</u>	<u>Total Exposure</u>
Grafton-Non-PPO	\$-0-	\$200 All	\$1,000 All	\$1,200
Grafton- PPO	\$-0-	\$ -0-	\$ -0-	\$ -0-
Mequon	\$882.72	\$ -0- Basic \$300 Maj	\$ -0- Basic \$2,000 Maj	\$3,182.72 ¹
Ozaukee County	\$204.00	\$400	\$ -0-	\$ 604
Port Washington	\$-0-	\$ -0- Basic \$300 Maj	\$ -0- Basic \$ 20% Maj	\$ 300+ ²
<u>Germantown</u>	<u>\$-0-</u>	<u>\$300 Maj</u>	<u>\$ -0-</u>	<u>\$ 300³</u>
City PPO	\$-0-	\$ - 0 -	\$ 600 All	\$ 600
City Non-PPO	\$-0-	\$300 All	\$1,200 All	\$1,500

It is reasonable to expect that the City would wish to provide a financial incentive for employees to participate in the PPO, and some disincentive to avoiding the PPO. The balancing of the substantial savings to the City for equivalent coverage through a PPO against the loss to employees of flexibility in choosing their provider would justify some increase in out of pocket costs for non-PPO use, reflecting the fact that that choice has a cost to the City. Further, the use of deductibles and coinsurance as a means of shifting costs is arguably more reasonable than imposing an unreimbursed premium payment on all employees, since costs are then related to use of the benefit. However, assuming that Cedarburg's employees do precisely as the City wishes, and use the PPO option, they will still move from a very low out-of-pocket expenditure (given the application of deductibles and co-pays only to major medical) to what would appear to be the higher reaches of the comparisons on actual costs. Using the non-PPO options as a

¹ For comparison purposes, the Standard Plan is used. Lower cost HMO options are also available in Mequon.

² There is no upper limit on the coinsurance for major medical costs under Port Washington's plan.

³ The Association's data on Germantown indicates that the major medical deductible was increased to \$100 per individual/\$300 per family as of 1/1/91. It does not indicate the level in 1990.

measure of change in the status quo provides an even more dramatic change in costs, from an often unrealized maximum of \$1,150 to more broadly applicable maximum of \$1,500. This makes the non-PPO option the highest employee cost of the plans for basic medical among the comparables.

While the principles underlying the City health insurance proposal are sound, the degree of cost shifting represents a decided change from the status quo and has little support in the comparables. Offsetting this somewhat is the data provided by the City showing that experience under the two plans yields an increased employee cost, on average, of \$7.50 per month for employees in the PPO options plan versus those in the current plan (City Exhibit #12). Still, arbitration is by its nature a non-innovative process, and changes in economic benefits generally require proof of some quid pro quo. While the City points to the high levels of compensation for City officers, those levels are not a new development, and presumably reflect the tradeoffs made in past bargains rather than a concession in return for increases in employee cost exposure under the health insurance plan.

The City has shown a reasonable need for change in the area of insurance, and the incentives for eschewing unnecessary coverage, as well as the concept of offering a PPO option are reasonable responses to the identified need. The Association's increase of the major medical deductible, while positive movement on the issue, does not appear to offer much realistic relief. However, the cost shifting features of the City offer exceed those necessary to provide an incentive for employees to use the PPO option. Given the lack of any quid pro quo for the proposed change, and the Association's concession in structuring its wage offer to save money for the City over the life of the contract,⁴ the undersigned concludes that the Association's offer on health insurance is slightly more reasonable than that of the City.

⁴ The Association's wage offer will save the City approximately \$22,000. The insurance plan would save approximately \$23,000 were it instituted at the beginning of next month. Granting the value of the Association's structured wage increase in dollars across the contract, its value as a quid pro quo is reduced by the fact that the end rate is the same under both wage offers, thus providing no carry over savings for the City, while the insurance proposal would presumably carry premium savings forward into future contracts.

V. Selection of a Final Offer

Both offers are flawed. The Association's proposal on shift selection needlessly interferes with the operational requirements of the Department. The City's offer on health insurance, although reasonable in concept, overreaches in establishing out of pocket costs for the non-PPO users in excess of the amounts needed to provide a reasonable disincentive, and costs for the PPO users that will likely be an increase for most employees over the old plan. Of the two unreasonable offers, the City's is the most amenable to correction in subsequent bargains. Since it imposes an undue economic burden, any hardship suffered by employees can be measured and offset by adjustments in insurance, wages or other economic benefits in the next round of negotiations.

On the basis of the foregoing, and the record as a whole, and after full consideration of the statutory criteria, the undersigned makes the following

AWARD

The final offer of the City of Cedarburg, together with the tentative agreements reached in bargaining, shall be incorporated into the 1990-1991 collective bargaining agreement.

Signed and dated this 11th day of May in Racine, Wisconsin:

Daniel Nielsen, Arbitrator